

THE COMMONWEALTH OF MASSACHUSETTS
OFFICE OF CONSUMER AFFAIRS AND BUSINESS REGULATION

**DEPARTMENT OF
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MEMORANDUM

TO: Service List in D.T.E. 01-34

FROM: Jody Stiefel, Hearing Officer
Paula Foley, Assistant General Counsel

DATE: April 19, 2005

RE: Special Access Services Investigation, D.T.E. 01-34
Proposal to Close Docket

CC: Mary Cottrell, Secretary
Michael Isenberg, Director, Telecommunications Division

I. INTRODUCTION

The Department of Telecommunications and Energy ("Department") opened the D.T.E. 01-34 docket on its own motion in March 2001, in response to a number of informal complaints concerning special access services provided by Verizon New England, Inc. d/b/a Verizon Massachusetts ("Verizon"). Special Access Services Investigation, D.T.E. 01-34, Vote and Order to Open Investigation at 3 (March 14, 2001) ("Vote and Order"). The Department stated that the purpose of the investigation was to determine through presentation of evidence: (1) whether Verizon's special access services are unreasonable under G.L. c. 159, § 16; and (2) if so, what steps Verizon should be required to take to improve its special access services. Id. This proceeding has examined, through formal adjudication, the quality of Verizon's intrastate special access services, including provisioning, maintenance, and repair, provided pursuant to state tariff.

On May 24, 2001, Verizon filed a report on intraLATA special access performance for Massachusetts, as required by the Department's Vote and Order.¹ Subsequently, the Department denied the motion of AT&T Communications of New England, Inc. ("AT&T") to expand this investigation to include special access services ordered out of Verizon's federal tariff.² D.T.E. 01-34, Order on AT&T's Motion to Expand Investigation (August 9, 2001). However, the Department found that it would use data related to the provision of interstate special access services as evidence relevant to findings it may make regarding the reasonableness of intrastate special access services, without applying any findings or potential remedies to interstate services. Id.; see also D.T.E. 01-34, Order on Verizon's Motion for Partial Reconsideration and/or Clarification at 11 (October 25, 2001) (Department denied Verizon's motion to reconsider or clarify that the interstate data it provided to the Department would not be made part of the record evidence in this case or subject to investigation).

Thereafter, from October 2001 through July 2002, a period of formal investigation ensued, involving extensive discovery, technical sessions, the submission of pre-filed testimony, hearings, and briefing. However, the Department has not issued a final Order in this case.

II. PROPOSAL TO CLOSE DOCKET

The Department has not received any complaints regarding special access performance since the record closed in this case in July 2002, supporting a determination that the special access performance problems reported from 1999 to 2001 that led to this investigation have been corrected. Furthermore, the FCC is expected to issue a decision in its special access performance proceeding³ in the near future. Given that nearly 100 percent of Verizon's special access services for Massachusetts are provisioned under its federal tariff, the FCC's findings in that docket would have a substantially greater effect on Verizon's special access performance, both in-state and interstate, than a Department decision in this docket. Therefore, the Department now proposes to discontinue the D.T.E. 01-34 investigation and close this docket.

¹ Verizon supplemented the report on September 7, 2001.

² More than 99 percent of Verizon's Massachusetts special access circuits are provisioned under its federal tariff. The Department found that the Federal Communications Commission ("FCC") has exclusive jurisdiction over the quality of service of federally tariffed special access services. Order on AT&T's Motion to Expand Investigation at 11.

³ In the Matter of Performance Measurements and Standards for Interstate Special Access Services, etc., CC Docket Nos. 01-321, 00-51, 98-147, 96-98, 98-141, 96-149, 00-229, RM 10329, Notice of Proposed Rulemaking, FCC 01-339 (rel. November 19, 2001).

Any party that objects to closing the D.T.E. 01-34 docket may file an opposition with the Department stating the reasons supporting continuation of the proceeding, by the close of business on Monday, May 9, 2005.

Please forward oppositions to the service list for this proceeding. In addition, one original and three copies of oppositions should be filed with:

Mary Cottrell, Secretary
Department of Telecommunications and Energy
One South Station, 2nd Floor
Boston, MA 02110
Attn: D.T.E. 01-34

Please also submit all written comments to the Department in electronic format using one of the following methods: (1) by e-mail attachment to dte.efiling@state.ma.us, Jody.Stiefel@state.ma.us, and Paula.Foley@state.ma.us; or (2) on a 3.5" disk. The text of the e-mail or the disk label must specify: (1) the docket number of the proceeding (D.T.E. 01-34); (2) name of the person or company submitting the filing; and (3) a brief descriptive title of the document. The electronic filing also should include the name, title, and telephone number of a person to contact in the event of a question about the filing. Text responses should be created in either WordPerfect, Microsoft Word, or an Adobe-compatible PDF file. Data or spreadsheet responses should be compatible with Microsoft Excel. All comments submitted in electronic format will be posted on the Department's web site: <http://www.mass.gov/dte>.

III. SERVICE LIST UPDATE

Please be advised that Jody Stiefel, Esq. is now the hearing officer assigned to this docket. Please add to your service list:

Jody Stiefel, Hearing Officer
(617) 305-3762
Jody.Stiefel@state.ma.us

Paula Foley, Assistant General Counsel
(617) 305-3608
Paula.Foley@state.ma.us

You may remove from the service list Joan Foster Evans, Hearing Officer, and Candice Allgaier, Telecommunications Division Analyst. Please inform the hearing officer of any further changes to the service list.